

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

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CLAIMANT: Lorna G. Theriault

CASE 40A-0312-R-2022

40A 204422-00

40A 211717-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claims 40A 204422-00 and 40A 211717-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims

examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. These claims did not receive any objections or notices of intent to appear.

On June 2, 2022, the Court consolidated these claims into Water Court Case 40A-0312-R-2022. The consolidation order set a filing deadline by which Claimant was to file information resolving the issue remarks. Claimant filed responsive information on July 28, 2022.

FINDINGS OF FACT

1. Each above-captioned claim appeared with the following issue remark:
THE POINT OF DIVERSION APPEARS TO BE INCORRECT.
THE POINT OF DIVERSION APPEARS TO BE IN THE
SEWNNE SEC 27 TWP 7N RGE 15E WHEATLAND COUNTY.

2. Claim 40A 211717-00 also appeared with the following issue remark:
CLAIM WAS NOT INCLUDED IN THE BASIN 40A
TEMPORARY PRELIMINARY DECREE ISSUED 05/07/1985.

3. Claimant states in the July 28, 2022 response that the legal land description identified by the issue remark on each claim is the current point of diversion location. This current location is the result of a post-July 1, 1973 change. The location was moved due to changes in the river course. The historical location is the NENWNE of Section 27, T7N, R15E, which is the legal land description appearing on both above-captioned claim abstracts.

4. The issue remarks should be removed from each above-captioned claim.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. Rule 1, W. R. Adj. R. An existing water right is a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Rule 2(a)(22), W.R.C.E.R.

CONCLUSIONS OF LAW

1. The Court should not modify any substantive element of the above-captioned claims because the issue remarks do not overcome the prima facie status of each claim.

2. The evidence in the record is sufficient to resolve and remove the issue remarks from each above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 204422-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: LORNA G THERIAULT
PO BOX 672
HARLOWTON, MT 59036 0672

Priority Date: MAY 31, 1884

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 3.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 250.00

Source Name: AMERICAN FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	27	7N	15E	WHEATLAND

Period of Diversion: MARCH 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	250.00		E2	22	7N	15E	WHEATLAND
Total:	250.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

204421-00	204422-00	204423-00	204424-00	211717-00
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 211717-00 STATEMENT OF CLAIM
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Status: ACTIVE

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PO BOX 672
HARLOWTON, MT 59036 0672

Priority Date: MAY 31, 1886

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

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***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 250.00

***Source Name:** AMERICAN FORK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	6		4	6N	15E	WHEATLAND
Period of Diversion: MARCH 1 TO DECEMBER 31						
Diversion Means: HEADGATE						
2		NENWNE	27	7N	15E	WHEATLAND
Period of Diversion: MARCH 1 TO DECEMBER 31						
Diversion Means: HEADGATE						
Period of Use: MARCH 1 TO DECEMBER 31						

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
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Total:	250.00						

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204421-00 204422-00 204423-00 204424-00 211717-00